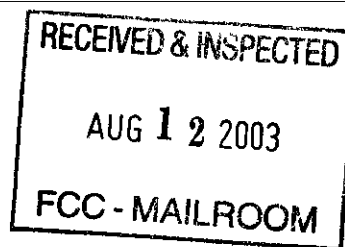




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August 6, 2003

EX PARTE

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: RM-10403
Petition for Rulemaking of Progeny LMS, LLC
For Amendment of Part 90 of the Commission's Rules
Governing the Location and Monitoring Service

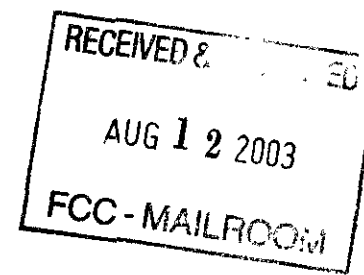
Dear Chairman Powell:

These comments are submitted on behalf of the American Public Power Association (APPA). APPA is a national service organization that represents the interests of more than 2,000 publicly-owned, not-for-profit electric utilities located in all states except Hawaii. Currently, approximately three-fourths of APPA's members serve communities with less than 10,000 residents. At present, public power systems operated by municipalities, counties, authorities, states and public utility districts provide electricity to approximately 40 million Americans. In addition, 511 public power systems offer some kind of communications service, some for their own use such as automated meter reading and municipal data networks and some for wholesale and retail provision such as fiber leasing, local telephone, cable television and cable modem.

As a national representative of publicly-owned utilities that operate automated meter reading ("AMR") systems in the 902-928 MHz band, the APPA wants to state its serious concerns about the changes to the service rules for the Location and Monitoring Service ("LMS") proposed by Progeny LMS, LLC ("Progeny").¹ We believe that many of our members would be adversely impacted by the rule changes that Progeny requests and ask the Commission to refrain from modifying its carefully crafted LMS rules and to reject Progeny's proposal.

Our understanding that the Commission is close to issuing an NPRM for this matter heightens our concerns.

¹ See Petition for Rulemaking of Progeny LMS, LLC, to Amend Part 90 of the Commission's Rules Governing the Location and Monitoring Service, RM-10403 (Mar. 5, 2002).



Unfortunately, even issuing the NPRM will have a substantial adverse effect on the unlicensed utility user community. It will place a cloud of uncertainty over the continued unlicensed use of the 902-928 MHz band just when such use is becoming increasingly important as utilities and customers strive to become more efficient in the delivery and use of scarce resources. The development of unlicensed radio technologies, and the public's increasing reliance on them, has been one of the few bright spots in the telecommunications industry in recent years. Yet nothing will undermine this success more quickly than regulatory churn in unlicensed usage regulations.

The LMS rules that were finalized in 1997 make it possible for LMS providers and Part 15 device users to operate together in the 902-928 MHz band without impeding each other's operations. This framework is just as important today as it was when the Commission first adopted its LMS rules. The safeguards that the Commission wisely built into the rules have allowed hundreds of utility companies to invest in and construct AMR systems throughout the country with the assurance that such systems could coexist with LMS in a congested band free of harmful interference. Progeny's proposal to eliminate these protections puts these operations at risk. The rule changes requested by Progeny will result in greater congestion in the 902-928 MHz band and will increase the potential for harmful interference to AMR users.

For these reasons, the existing service requirements and restrictions imposed on LMS providers concerning real-time interconnection with the public switched telephone network ("PSTN") should be retained.² In adopting the LMS rules, the Commission recognized that expanding the permitted uses of LMS inevitably would result in more intensive use of the 902-928 MHz band, thereby leading to severe spectrum congestion.³

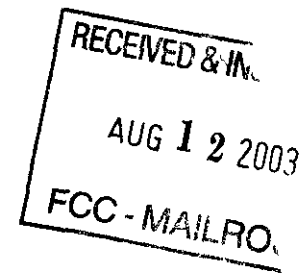
By eliminating these restrictions, as Progeny proposes, the Commission would open the door to "[u]nfettered interconnection and messaging" by LMS providers.⁴ Such freedom would result in the expanded use of LMS, including interconnected voice and data communications, to services far beyond the Commission's intended purpose for the LMS allocation. When it adopted the service rules for LMS, the Commission made clear that LMS is intended to be only a mobile location and monitoring service. The Commission specifically denied requests to use the allocation for broader messaging and data services.⁵ There is no reason to revisit these findings as Progeny suggests. The rules as written prevent the proliferation of interconnected voice and data communications in the 902-928 MHz band by limiting LMS to its intended operations and promote spectrum efficiency in a heavily used band.

² See 47 C.F.R. §§ 90.353(b) and (c).

³ See *In re Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Report and Order, 10 FCC Rcd 4695, 4708 (1995) ("*LMS R&O*").

⁴ *Id.*

⁵ See *id.* at 4709.



The Commission also should not entertain Progeny's request to eliminate the safe harbor provision in the LMS rules, which exempts eligible Part 15 devices from being considered sources of harmful interference to multilateration LMS systems.⁶ Recognizing the important contribution that Part 15 technologies, including AMR, provide to the public, the Commission adopted this safe harbor to allow Part 15 devices to coexist in the 902-928 MHz band with LMS.⁷ Today Part 15 operators who satisfy the safe harbor requirements are secure in the knowledge that they remain exempt from complaints of harmful interference from multilateration LMS operators in the band.⁸ Based on this assurance, municipal utilities have deployed substantial numbers of Part 15 devices as part of their AMR systems. The safe harbor provision is vital to the continued operation of these systems, and Progeny offers no justification for putting these devices at risk other than its own business interests.

The Commission took great care in crafting its LMS rules, balancing the interests of the various users of the 902-928 MHz band. It is inappropriate for Progeny on the basis of its own business plans to ask the Commission to revisit issues that were hard-fought and resolved years ago. The existing rules promote cooperation between users and encourage spectrum efficiency in an already congested band. For these reasons, the Commission should dismiss Progeny's Petition for Rulemaking and retain the existing LMS rules that have worked effectively for so many years to achieve these dual goals.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Richard B. Geltman".

Richard B. Geltman
General Counsel

cc: Hon. Kathleen Q. Abernathy, Commissioner
Hon. Jonathan S. Adelstein, Commissioner
Hon. Michael J. Copps, Commissioner
Hon. Kevin J. Martin, Commissioner
✓ Secretary, Federal Communications Commission
John Muleta, Chief, Wireless Telecommunications Bureau
RM-10403

⁶ See 47 C.F.R. § 90.361.

⁷ See *LMS R&O*, 10 FCC Rcd at 4714-15.

⁸ See *id.* at 4715.